

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 21 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SHYAMBHAI SORABSHA SUI

Versus

D D PARMAR

Appearance:

MR JB PARDIWALA for Petitioner

Mr.MR ANAND, P.P. with Mr. N.D.Gohil, A.P.P.

for the Respondents

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 13/02/97

ORAL JUDGEMENT

The petitioner, an externee under the impugned order dated 25.9.1996 (Annexure : B) passed by respondent No.1, has preferred this petition challenging the said order as well as the Appellate order dated 16.12.1996 (Annexure : C) on number of grounds, inter alia on the ground appearing in Ground No.2 at pages : 5 to 7.

2. Briefly stated the ground would indicate that the Externing Authority has not applied its mind and the impugned order of externment would suffer from non-application of mind inasmuch as the offences charged as per the cases enumerated in the impugned order of externment would indicate mentioning of Chapter : XII, XVI and XVII of the Indian Penal Code, whereas the actual facts and the provisions of the Indian Penal Code set out in the respective cases apparently do not disclose any of the facts and the provisions relatable to Chapter XII of the Indian Penal Code. Chapter : XII contains within it Sections 230 to 263-A dealing with the offences relating to coins and Government stamps. As none of the offences and the facts forming the offences as per the cases set out in the impugned order of externment pertains to Chapter : XII, there is apparent non-application of mind on the part of the Externing Authority. Mr.Pardiwala, learned Advocate appearing for the petitioner has made submissions flowing from this ground of challenge against the impugned order of externment. He places reliance upon a decision rendered by a Division Bench of this Court in the case of Rajput Karansinh Gagji V/s. Sub-Divisional Magistrate, Bhavnagar, reported in 1988 (2) - XXIX(2) G.L.R. 1402. That was a similar case wherein there was a mention of Chapter : XII in the order of externment as against there being absence of any facts as well as the provisions which could be related to the provisions contained in Chapter : XII I.P.Code. This Court held that such a state of affairs would reveal non-application of mind on the part of externing authority and the whole order of externment would have to be quashed on the simple ground of non-application of mind by the externing authority.

3. Having heard the learned A.P.P. for the State, I am of the opinion that the aforesaid decision of this Court would squarely apply to the present case.

4. In the result this petition is allowed. The impugned order of externment dated 25.9.1996 and the order of confirmation dated 16.12.1996 passed by the Appellate Authority are hereby quashed and set aside. Rule made absolute accordingly.

Direct service permitted.

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